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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ANDREA CRANNAGE, an individual
Plaintiff,

v.

GOLD'S GYM; GOLD'S GYM
HOLDING CORP.; NAUTILUS, INC.,
and DOES 1 through 50, inclusive,
Defendants.

Case No. 2:18-cv-08063-DFS (PLA)
Judge: Hon. Dale S. Fischer
CrtRm: 7D

PROTECTIVE ORDER

Complaint filed: July 20, 2018 Date
of removal: September 17, 2018
Trial: February 25, 2020

1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than pursuing this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
6 the following Stipulated Protective Order. The parties acknowledge that this Order
7 does not confer blanket protections on all disclosures or responses to discovery and
8 that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles.

11 2. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets, customer and pricing lists and
13 other valuable research, development, commercial, financial, technical and/or
14 proprietary information for which special protection from public disclosure and from
15 use for any purpose other than prosecution of this action is warranted. Such
16 confidential and proprietary materials and information consist of, among other
17 things, confidential business or financial information, information regarding
18 confidential business practices, or other confidential research, development, or
19 commercial information (including information implicating privacy rights of third
20 parties), information otherwise generally unavailable to the public, or which may be
21 privileged or otherwise protected from disclosure under state or federal statutes,
22 court rules, case decisions, or common law. Accordingly, to expedite the flow of
23 information, to facilitate the prompt resolution of disputes over confidentiality of
24 discovery materials, to adequately protect information the parties are entitled to keep
25 confidential, to ensure that the parties are permitted reasonable necessary uses of
26 such material in preparation for and in the conduct of trial, to address their handling
27 at the end of the litigation, and serve the ends of justice, a protective order for such
28 information is justified in this matter. It is the intent of the parties that information

1 will not be designated as confidential for tactical reasons and that nothing be so
2 designated without a good faith belief that it has been maintained in a confidential,
3 non-public manner, and there is good cause why it should not be part of the public
4 record of this case.

5 3. ACKNOWLEDGEMENT OF UNDER SEAL FILING PROCEDURE

6 The parties further acknowledge, as set forth in Section 14.3, below, that
7 this Stipulated Protective Order does not entitle them to file confidential information
8 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
9 and the standards that will be applied when a party seeks permission from the court
10 to file material under seal. There is a strong presumption that the public has a right
11 of access to judicial proceedings and records in civil cases. In connection with non-
12 dispositive motions, good cause must be shown to support a filing under seal. See
13 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006),
14 Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-
15 Welbon v. Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
16 stipulated protective orders require good cause showing), and a specific showing of
17 good cause or compelling reasons with proper evidentiary support and legal
18 justification, must be made with respect to Protected Material that a party seeks to
19 file under seal. The parties' mere designation of Disclosure or Discovery Material
20 as CONFIDENTIAL does not— without the submission of competent evidence by
21 declaration, establishing that the material sought to be filed under seal qualifies as
22 confidential, privileged, or otherwise protectable—constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial, then
24 compelling reasons, not only good cause, for the sealing must be shown, and the
25 relief sought shall be narrowly tailored to serve the specific interest to be protected.
26 See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir. 2010). For
27 each item or type of information, document, or thing sought to be filed or introduced
28 under seal, the party seeking protection must articulate compelling reasons,

supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration. Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

4. DEFINITIONS

4.1 Action: this pending federal lawsuit.

4.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

4.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

4.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

4.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery.

4.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this Action.

2 4.8 House Counsel: attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 4.9 Non-Party: any natural person, partnership, corporation, association or
6 other legal entity not named as a Party to this action.

7 4.10 Outside Counsel of Record: attorneys who are not employees of a party
8 to this Action but are retained to represent a party to this Action and have appeared
9 in this Action on behalf of that party or are affiliated with a law firm that has
10 appeared on behalf of that party, and includes support staff.

11 4.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 4.13 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 4.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL.”

22 4.15 Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24 5. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of the
3 trial judge and other applicable authorities. This Order does not govern the use of
4 Protected Material at trial.

5 6. DURATION

6 Once a case proceeds to trial, information that was designated as
7 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
8 as an exhibit at trial becomes public and will be presumptively available to all
9 members of the public, including the press, unless compelling reasons supported by
10 specific factual findings to proceed otherwise are made to the trial judge in advance
11 of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause”
12 showing for sealing documents produced in discovery from “compelling reasons”
13 standard when merits-related documents are part of court record). Accordingly, the
14 terms of this protective order do not extend beyond the commencement of the trial.

15 7. DESIGNATING PROTECTED MATERIAL

16 7.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under
18 this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items or oral or written
21 communications that qualify so that other portions of the material, documents, items
22 or communications for which protection is not warranted are not swept unjustifiably
23 within the ambit of this Order.

24 Mass, indiscriminate or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an improper
26 purpose (e.g., to unnecessarily encumber the case development process or to impose
27 unnecessary expenses and burdens on other parties) may expose the Designating
28 Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 7.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
6 that qualifies for protection under this Order must be clearly so designated before
7 the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), that the Producing Party affix at a minimum, the legend
12 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
13 contains protected material. If only a portion of the material on a page qualifies for
14 protection, the Producing Party also must clearly identify the protected portion(s)
15 (e.g., by making appropriate markings in the margins).

16 A Party or Non-Party that makes original documents available for inspection
17 need not designate them for protection until after the inspecting Party has indicated
18 which documents it would like copied and produced. During the inspection and
19 before the designation, all of the material made available for inspection shall be
20 deemed "CONFIDENTIAL." After the inspecting Party has identified the
21 documents it wants copied and produced, the Producing Party must determine which
22 documents, or portions thereof, qualify for protection under this Order. Then, before
23 producing the specified documents, the Producing Party must affix the
24 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
25 portion of the material on a page qualifies for protection, the Producing Party also
26 must clearly identify the protected portion(s) (e.g., by making appropriate markings
27 in the margins).

28 (b) for testimony given in depositions that the Designating Party

1 identifies the Disclosure or Discovery Material on the record, before the close of the
2 deposition all protected testimony.

3 (c) for information produced in some form other than documentary and
4 for any other tangible items, that the Producing Party affix in a prominent place on
5 the exterior of the container or containers in which the information is stored the
6 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
7 protection, the Producing Party, to the extent practicable, shall identify the protected
8 portion(s).

9 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party’s right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court’s
18 Scheduling Order.

19 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37-1 et seq.

21 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
22 joint stipulation pursuant to Local Rule 37-2.

23 8.4 The burden of persuasion in any such challenge proceeding shall be on
24 the Designating Party. Frivolous challenges, and those made for an improper
25 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
26 parties) may expose the Challenging Party to sanctions. Unless the Designating Party
27 has waived or withdrawn the confidentiality designation, all parties shall continue to
28 afford the material in question the level of protection to which it is entitled under the

Producing Party's designation until the Court rules on the challenge.

9. ACCESS TO AND USE OF PROTECTED MATERIAL

9.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (g) the author or recipient of a document containing the information or
3 a custodian or other person who otherwise possessed or knew the information;

4 (h) during their depositions, witnesses, and attorneys for witnesses, in
5 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
6 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
7 they will not be permitted to keep any confidential information unless they sign the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
9 agreed by the Designating Party or ordered by the court. Pages of transcribed
10 deposition testimony or exhibits to depositions that reveal Protected Material may
11 be separately bound by the court reporter and may not be disclosed to anyone except
12 as permitted under this Stipulated Protective Order; and

13 (i) any mediators or settlement officers and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions.

15 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
16 PRODUCED IN OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 “CONFIDENTIAL,” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification
21 shall include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or
23 order to issue in the other litigation that some or all of the material covered by the
24 subpoena or order is subject to this Protective Order. Such notification shall include
25 a copy of this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be
27 pursued by the Designating Party whose Protected Material may be affected.

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1 If the Designating Party timely seeks a protective order, the Party served with
2 the subpoena or court order shall not produce any information designated in this
3 action as “CONFIDENTIAL” before a determination by the court from which the
4 subpoena or order issued, unless the Party has obtained the Designating Party’s
5 permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this Action
8 to disobey a lawful directive from another court.

9 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO
10 BE PRODUCED IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced by a
12 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
13 produced by Non-Parties in connection with this litigation is protected by the
14 remedies and relief provided by this Order. Nothing in these provisions should be
15 construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the NonParty
21 that some or all of the information requested is subject to a confidentiality agreement
22 with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated
24 Protective Order in this Action, the relevant discovery request(s), and a reasonably
25 specific description of the information requested; and

26 (3) make the information requested available for inspection by the Non-
27 Party, if requested.

28 (c) If the Non-Party fails to seek a protective order from this court

1 within 14 days of receiving the notice and accompanying information, the Receiving
2 Party may produce the Non-Party's confidential information responsive to the
3 discovery request. If the Non-Party timely seeks a protective order, the Receiving
4 Party shall not produce any information in its possession or control that is subject to
5 the confidentiality agreement with the Non-Party before a determination by the
6 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
7 expense of seeking protection in this court of its Protected Material.

8 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under this
11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
12 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
13 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
14 or persons to whom unauthorized disclosures were made of all the terms of this
15 Order, and (d) request such person or persons to execute the "Acknowledgment and
16 Agreement to Be Bound" attached hereto as Exhibit A.

17 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
18 OTHERWISE PROTECTED MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other protection,
21 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
22 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
23 may be established in an e-discovery order that provides for production without prior
24 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
25 parties reach an agreement on the effect of disclosure of a communication or
26 information covered by the attorney-client privilege or work product protection, the
27 parties may incorporate their agreement in the stipulated protective order submitted
28 to the court.

1 14. MISCELLANEOUS

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order, no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 14.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
11 only be filed under seal pursuant to a court order authorizing the sealing of the
12 specific Protected Material. If a Party's request to file Protected Material under seal
13 is denied by the court, then the Receiving Party may file the information in the public
14 record unless otherwise instructed by the court.

15 15. FINAL DISPOSITION

16 After the final disposition of this Action, as defined in paragraph 6, within 60
17 days of a written request by the Designating Party, each Receiving Party must return
18 all Protected Material to the Producing Party or destroy such material. As used in
19 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
20 summaries, and any other format reproducing or capturing any of the Protected
21 Material. Whether the Protected Material is returned or destroyed, the Receiving
22 Party must submit a written certification to the Producing Party (and, if not the same
23 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
24 (by category, where appropriate) all the Protected Material that was returned or
25 destroyed and (2) affirms that the Receiving Party has not retained any copies,
26 abstracts, compilations, summaries or any other format reproducing or capturing any
27 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing

1 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
2 reports, attorney work product, and consultant and expert work product, even if such
3 materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth in
5 Section 6 (DURATION).

6 16. VIOLATION

7 Any violation of this Order may be punished by appropriate measures
8 including, without limitation, contempt proceedings and/or monetary sanctions.
9

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
11

12 DATED: 7/1/2019 /s/ Timothy McCormick
13 Timothy R. McCormick
14

15 DATED: 7/1/2019 /s/ Nicole Aaronson
16 Nicole A. Aaronson
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18 DATED: 7/1/2019 /s/ Jocelyn Julian
19 Jocelyn Julian
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21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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23 DATED: July 3, 2019
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26 Hon. Paul L. Abrams, U.S. Magistrate Judge
27 Central District of California
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____ [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of *Andrea Crannage v. Gold's Gym, et al.* Case No: 2:18-cv-08063-DFS (PLA). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [full name] of _____ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____